IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8712 OF 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SYED FAZALREHMAN MOHAMMADALI

Versus

STATE OF GUJARAT & ORS.

Appearance:

1. Special Civil Application No. 8712 of 1999

MR. R.C. JANI for Petitioner

MR. M.S. RAO, AGP for Respondent Nos. 1 & 2

MS. VINITA VINAYAK for

M/S. THAKKAR ASSOC. for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 29/03/2004

ORAL JUDGEMENT

1. Mr.M.S.Rao, learned AGP for respondent nos.1 and 2, and Ms.Vinita Vinayak, learned Advocate for respondent

no.3, submitted that this matter is similar to that of Special Civil Application No.8166 of 1999, which was heard and decided by this Court on 26th March, 2004. This matter pertains to Sabarkantha District, which had different strength of Talati-cum-Mantri cadre. Except that, there are some minor differences on factual aspects, the law point involved is the same.

2. The present petition is filed by the petitioner being aggrieved of non-grant of appointment to the post of Talati-cum-Mantri. The case of the petitioner is that he applied for the post of Talati-cum-Mantri in response to an advertisement dated 28th February, 1991 for Sabarkantha District. The advertisement pertained to 32 posts, of which 12 were for General Category, while 3 were reserved for Scheduled Caste, 5 for Scheduled Tribes, 3 for Socially and Educationally Backward Class, and 9 for physically challenged persons. On 9th February, 1992, examination was held and the petitioner was selected. He was placed at Serial No.1 in the Select List. He was informed about his selection by a letter dated 21st July, 1992, a copy of which is placed at Annexure-B collectively (page-20). It is contended by the petitioner that on account of 10% cut imposed by the Government vide Government Resolution dated 28th October, 1991, the petitioner was not appointed. On the other hand, in Bharuch District where, in the year 1991, an advertisement for the recruitment of Talati-cum-Mantri was issued, all the posts were filled in. The petitioner wrote several letters to respondent no.2-Board for issuing appointment order and also made grievance to various Ministers, but, he did not hear anything favourable. The petitioner along with several other similarly situated persons resorted to hunger strike from 12th February 1996 at Sector CH-5, which was brought to an end, on an assurance given by the Minister and Members of Legislative Assembly on 15th February, 1996. The petitioner waited for almost four years and approached this Court by filing this petition on 2nd November, 1999 only.

3. The learned Advocate for respondent no.3 i.e. District Development Officer, Sabarkantha District, and the learned AGP, Mr.M.S.Rao, for respondent nos.1 and 2, submitted that the petition deserves to be dismissed on a sole ground of delay and latches. It is emphatically submitted by the learned Advocates for the respondents that appointment is sought for the post for which advertisement was issued on 28th February, 1991 and Select List was prepared in the year 1992. The petitioner has come to this Court in the year 1999

without setting out any reason for approaching this Court so late. The learned Advocates submitted that the only reason, which they could gather from the petition, which motivated the petitioner to approach this Court is a favourable disposition of Special Civil Application No.7323 of 1997 in favour of the petitioner of that petition on 30th June, 1999.

4. The learned Advocate for respondent no.3 has filed affidavit-in-reply affirmed by Mr.C.M.Vaghela, Deputy District Development Officer (Panchayat), Sabarkantha District Panchayat dated 25th January, 2000. The learned AGP has filed affidavit-in-reply dated 22nd December, 2003 on behalf of respondent no.1 affirmed by Mr.J.U.Gandhi, Under Secretary, Panchayats, Rural Housing & Rural Development, wherein it is stated that the total strength of the cadre of Talati-cum-Mantri in the year 1995 was 603, at the rate of 20%, 120 posts are to be kept vacant. Meaning thereby, only 483 posts were to be kept filled. Only if less than 483 posts were filled, a question of giving appointment would have arisen. As there were already 514 posts filled, no new appointment could be made. It is stated in the affidavit-in-reply that validity of the selection list was extended upto 30th June, 1997 by Government Resolution, Panchayat Department, Gandhinagar dated 6th December, 1996 bearing No.MKM/4098/1313/93/KH. The date of 30th June, 1997 is same for all districts in the State and in no district, Select List was continued to be valid beyond this date. It is also stated in the affidavit-in-reply that in addition to the earlier cut of 10% by Government Resolution dated 28th October, 1991, cut of further 10% is imposed by another Government Resolution dated 9th September, 1998. This later 10% cut was to be implemented in two phases; the first phase of 5% was to be effected by 31st March, 1999 and the second phase of remaining 5% was to be effected by 31st March, 2000. In view of that, there was no question of offering any appointment to the petitioner and the petition deserves to be dismissed.

5. In the above facts and circumstances of the case, it is clear that the petitioner has approached this Court belatedly, in the matter of advertisement of 1991, Select List of 1992, validity of which was not extended beyond 30th June, 1997, as the petition was filed in the year 1999. The petitioner, even having resorted to the hunger strike in the year 1996, had chosen to await for three more years after 1996 also. Thus, the petitioner has not approached this Court in time, which is one of the condition precedent for exercising the discretion under

Article 226 of the Constitution of India, hence, no relief can be granted.

6. In the result, the petition fails and is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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